

ORIGINAL



Robson Communities™
Master-Planned Resort Living



0000080433

47

OPEN MEETING AGENDA ITEM

RECEIVED

January 10, 2008

Arizona Corporation Commission

2008 JAN 10 P 4:38

Mr. Ernest Johnson

DOCKETED

Director for Utilities Division

Arizona Corporation Commission JAN 10 2008

1200 West Washington Street

Phoenix, Arizona 85007

DOCKETED BY

**Re: Robson Communities' Comments on Staff Recommendations on Proposed Changes to Rules regarding Certificate of Convenience and Necessity (CC&N) for Water and Sewer Utilities—
(Docket Nos. RW-00000B-07-0051 and RSW-00000A-07-0051)**

Dear Mr. Johnson:

Thank you for this opportunity to comment on the Staff Recommendations relating to the above proposed rulemaking for water and wastewater companies. As you are aware, Robson Communities, Inc. (RCI) submitted an initial set of comments on April 6, 2007. Our comments today are intended to supplement our earlier more detailed comments.

Initially, we remain concerned about the matter of the Commission's policy regarding limitations on groundwater use for golf courses and other water features. Specifically, these policies prohibit what are in fact legal uses of groundwater and they have a direct and immediate negative impact on RCI's business model. From Commissioner Hatch-Miller's letter dated September 26, 2007 and filed in the docket for this rulemaking, and several other recent discussions, it was our understanding that the Commission planned to address and gather more information on these issues as part of this generic rulemaking docket. *See attached copy of letter dated September 26, 2007.* What is the Commission's intent with regard to addressing these policies in this rulemaking process?

Another issue of concern to RCI, which we also specifically raised in our initial comments, is the provisions in the proposed rules on requests for service. RCI remains concerned about large "land grab" type situations where there is a no substantive demonstration of requests for service from a predominance of landowners within the application area. Generally, we believe the Commission's rules should affirmatively support issuance of CC&Ns and CC&N extensions for applicants that submit clear requests for service from landowner's within the proposed CC&N area for service from that utility. The Commission should set forth in the rules some limitations in these "land-grab" situations.

In addition, the Commission should incorporate streamlined requirements for applicants where the utility is directly affiliated with the landowner/developer. In this special situation, the developer has taken the time and made the investment to set up a utility, which will be regulated by the Commission, to serve customers within the applicant's development. We believe that if the developer-affiliated applicant is determined to be "fit and proper" the Commission's rules should allow for a streamlined process for new CC&N applications in this special circumstance. This would greatly reduce demands on staff time, as well as generate less hostility and non-productive opposition over CC&Ns in these limited situations.

For example, the proposed new rules would require applicants to submit information regarding the corporate limits of cities and towns within 5 miles and the service territories for providers within 1 mile of the CC&N or extension area in the application.¹ In the case where a developer-affiliated utility will be serving only the lands within that landowner's development and the utility is found by the Commission to be fit and proper, these types of provisions only invite opposition and are not productive. Proximity to a nearby city or town should be irrelevant to a CC&N request when the lands to be served are not within the municipality's jurisdiction and it is the developer's desire to be served by its own qualified utility. Thus, we believe this provision could be eliminated for developer-affiliated applicants.

In addition, we believe there are other provisions within the proposed rules that could be streamlined in this special situation, for example, the requirement to submit information regarding ADWR Assured Water Supply demonstrations is duplicative. State law specifically requires the developer to make these demonstrations prior to subdividing and selling lots. When a utility is not affiliated with the developer this type of requirement makes sense because the utility is not directly required by state law to prove an assured water supply. However, when the developer is affiliated with the utility this concern is already addressed in existing law. Therefore, we believe this provision could be eliminated for developer-affiliated applicants.

Moreover, for CC&N extensions when the utility is developer-affiliated, we believe the Commission could adopt an even more streamlined process whereby an applicant simply demonstrates "in compliance" status with applicable Arizona Department of Water Resources (ADWR) and Arizona Department of Environmental Quality regulations, and submits requests for service in the extension area where the developer owns the lands. The utility would already have an established track record and should not have to compete with other providers when it is the landowner's desire to be served by its own utility.

If the Commission is inclined to pursue the adoption of these types of administrative streamlining provisions, we would ask that the matter be remanded back to Staff. We would be glad to work with the Staff to develop specific rule language to address these concepts.

¹ See proposed rules A.A.C. R14-2-402(B)(2)(j)(iv) and (v), and A.A.C. R14-2-602(B)(2)(k)(iv) and (v).

Finally, we believe there are several technical aspects of the proposed rules that remain to be addressed. For example, it was our understanding that with respect to the "service territory" map information required under proposed rules A.A.C. R14-2-402(B)(2)(j)(v) and A.A.C. R14-2-602(B)(2)(k)(v), it would be sufficient for applicants to submit a copy of the most current service area map that is on file with ADWR. As a practical matter, we do not understand how applicant's will be able to comply with the current language in the proposed rules asking for the current "service territory" map of provider's within 1 mile of a CC&N application area, if something other than the ADWR map is required. This type of information is generally not public information and is not readily available to applicants. Also, regarding the provision on demonstrating the "financial condition" of the applicant,² the rules do not specify how a newly formed entity for a new CC&N meets this requirement? We would ask the Commission to remand this matter back to Staff to specifically address these technical aspects of the proposed rules.

I look forward to continuing to work with both the Commission members and the Staff in this rulemaking process. If you have any questions or would like to discuss our comments with me personally, please feel free to give me a call.

Sincerely,



Jim Poulos

Enclosures

Cc: Mike Gleason, Commission Chairman, ACC
William A. Mundell, Commissioner, ACC
Jeff Hatch-Miller, Commissioner, ACC
Kristin K. Mayes, Commissioner, ACC
Gary Pierce, Commissioner, ACC

² See proposed A.A.C. R14-2-402(B)(2)(e) and A.A.C. R14-602(B)(f).

COMMISSIONERS
MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

September 26, 2007

Chairman Gleason
Commissioner Mundell
Commissioner Mayes
Commissioner Pierce

Re: Use of Effluent and Groundwater on Golf Courses and Ornamental Water Features;
Docket No. RW-00000B-07-0051

Dear Colleagues:

I am interested in gathering more information about the use of effluent and groundwater on golf courses and ornamental water features.

I believe a full discussion of policies, quantifiable impacts and benefits of effluent and groundwater management on golf courses and ornamental water features is warranted. The discussion should include specific policies for areas inside Active Management Areas (AMAs) as well as outside AMAs.

In addition, I would like to hear from various parties about whether the Arizona Department of Water Resources' (ADWR) current management plans would be a good model for Commission rules. I am open to input from all parties: golf courses, developers, resorts, water companies, Commission staff, and other affected parties.

In my opinion, the best way to collect more information is through the current CC&N generic docket. I would like to have an open and full discussion of all the issues through this forum. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Hatch-Miller".

Jeff Hatch-Miller, Commissioner
Arizona Corporation Commission

Cc: Dean Miller
Chris Kempley
Ernest Johnson
Lace Collins